IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.2391 OF 2003

Win Chemicals Limited & Ors. ...Petitioners.
Vs.
Assistant Registrar, Co-operative Societies & Anr. ...Respondents.
....
Mr. G.S. Godbole with Mr. S.S. Kanetkar for the Petitioners.
Mr.Anish Kamat i/b. V. Deshpande & Co. for Respondent No.2.
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CORAM : DR.D.Y.CHANDRACHUD, J.

July 19, 2006.

P.C.

Two applications for recovery of moneys due and outstanding to the Second Respondent have been filed under Section 101 of the Maharashtra Co-operative Societies' Act, 1960, before the Registrar. The amount that has been claimed in the first application is Rs.1,08,86,941/- together with interest. In the second application the amount that has been claimed is Rs.25,14,921/- together with interest. Both the applications are pending.

2. The Petitioners have questioned the jurisdiction of the Assistant Registrar relying upon the judgment of the Full Bench in

Narendra Kantilal Shah vs. Joint Registrar, Co-operative Societies, (Appeal), Bombay.[1] Initially when this petition was admitted, interim relief was granted in terms of prayer clause (c) staying the proceedings in the two recovery applications. In Notice of Motion 78 of 2006 that was taken out in this proceeding, the interim stay came to be vacated. The attention of the Learned Single Judge was drawn to an order of the Division Bench dated 23rd November 2003 passed in a batch of petitions in which the Division Bench declined to grant interim stay of the proceedings before the Assistant Registrar. The Division Bench noted that the judgment of the Full Bench in **Narendra Kantilal Shah**' s case has been stayed by the Supreme Court. Consequently, the Division Bench held that the authorities under the Maharashtra Co-operative Societies' Act, 1960, can continue the proceedings. The interim stay has, therefore, been vacated. The position therefore, is that the judgment of the Full Bench holding that the authorities under the Maharashtra Co-operative Societies' Act, 1960, would cease to have jurisdiction upon the enforcement of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, has been stayed. The Division Bench has noted that as a result of the stay

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granted to the judgment of the Full Bench, the proceedings before the Competent Authority under Section 101 of the Maharashtra Co-operative Societies' Act, 1960, can be continued. In these circumstances, the submission of Counsel appearing on behalf of the Petitioners, that the by the interim order dated 16th January 2004 passed by the Supreme Court only the operative direction in the judgment of the Full Bench has been stayed cannot be countenanced. It is clear from the order of the Supreme Court dated 16th January 2004 in **Greater Bombay Co-op. Bank Ltd. vs. Union Yarn Tex. Pvt. Ltd.** (Petition for Special Leave to Appeal (Civil) 886/04) that pending further orders there shall be an ad-interim stay of the operation of the impugned judgment, namely, the judgment of the Full Bench. Moreover, particularly having regard to the fact that the stay has already been vacated in these proceedings, it would be manifestly inappropriate to stay the proceedings before the Assistant Registrar. The Maharashtra Co-operative Societies' Act, 1960, provides a self contained Code containing provisions for challenges to the decision of the Assistant Registrar under Section 101. It would be only appropriate and proper that the Petitioners are relegated to their statutory remedies. All the rights and contentions are kept open.

3. Having regard to the nature of the controversy that was in question before the Assistant Registrar at that stage, it would be appropriate to direct that the Assistant Registrar shall hear the parties on the merits of their respective claims and contentions before passing final orders.

4. The Petition is dismissed. Rule discharged.

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